

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE CRUZ,

Plaintiff

Case No. 2:21-cv-01640-RFB-NJK

ORDER

v.

ROBERSON, *et al.*,

Defendants

On September 14, 2021, this Court issued an order directing Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before November 15, 2021. (ECF No. 3). The November 15, 2021 deadline has now expired, and Plaintiff has not filed a fully complete application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, failure to obey

1 a court order, or failure to comply with local rules, the court must consider several factors:
 2 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 3 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 4 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
 5 *See Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
 6 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

7 Here, the Court finds that the first two factors, the public's interest in expeditiously
 8 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
 9 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
 10 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
 11 in filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air*
 12 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
 13 disposition of cases on their merits—is greatly outweighed by the factors in favor of
 14 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
 15 the court's order will result in dismissal satisfies the "consideration of alternatives"
 16 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
 17 F.2d at 1424. The Court's order requiring Plaintiff to file a fully complete application to
 18 proceed *in forma pauperis* or pay the full \$402 filing fee on or before November 15, 2021
 19 expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff does not file a fully
 20 complete application to proceed *in forma pauperis* with all three documents or pay the full
 21 \$402 filing fee for a civil action on or before November 15, 2021, this case will be subject
 22 to dismissal without prejudice for Plaintiff to refile the case with the Court, under a new
 23 case number, when Plaintiff is has all three documents needed to file a complete
 24 application to proceed *in forma pauperis* or pays the the full \$402 filing fee." (ECF No. 3
 25 at 3). Thus, Plaintiff had adequate warning that dismissal would result from
 26 noncompliance with the Court's order to file a fully complete application to proceed *in*
 27 *forma pauperis* or pay the full \$402 filing fee on or before November 15, 2021.

28 IT IS THEREFORE ORDERED that this action is dismissed without prejudice

1 based on Plaintiff's failure to file a fully complete application to proceed *in forma pauperis*
2 or pay the full \$402 filing fee in compliance with this Court's order dated September 14,
3 2021. (ECF No. 3).

4 IT IS FURTHER ORDERED that the Clerk of Court will close the case and enter
5 judgment accordingly.

6 IT IS FURTHER ORDERED that Plaintiff may move to reopen this case and vacate
7 the judgment by filing a motion for reconsideration of this order. In this motion, the Plaintiff
8 is required to explain what circumstances delayed him from paying the filing fee or filing
9 the application to proceed *in forma pauperis*. If the Court finds there to be good cause or
10 a reasonable explanation therein, the Court will reopen the case and vacate the judgment.

11 DATED: May 19, 2022.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE